THE WALKERTON INQUIRY

The Honourable Dennis R. O'Connor, Commissioner

RULING ON STANDING AND FUNDING

I. THE INQUIRY PROCESS

I have been appointed by Order in Council 1170/2000 to conduct an inquiry into the following matters:

(a) the circumstances which caused hundreds of people in the Walkerton area to become ill, and several of them to die in May and June 2000, at or around the same time as *Escherichia coli* bacteria were found to be present in the town's water supply;

(b) the cause of these events including the effect, if any, of government policies, procedures and practices; and

(c) any other relevant matters that the commission considers necessary to ensure the safety of Ontario's drinking water.

I will be conducting the Inquiry in two parts. Part I will focus on the matters set out in paragraphs (a) and (b) of the Order in Council. Part I will be further divided into two sub-parts: Part IA and Part IB. Part IA will focus on the circumstances and causes of the *E. coli* contamination in the Walkerton water supply, other than those causes set out in paragraph (b) of the Order in Council. Part IB will address the effect, if any, of government policies, procedures and practices on the cause of these events.

I recognize that there will be some overlap in the issues to be considered in Parts IA and IB. Nevertheless, I consider the division of the Inquiry into these parts important for making my decisions on standing and funding. I will be flexible in allowing participation where the lines drawn would deny me the assistance which I consider important to a grant of standing.

In Part II of the Inquiry, I will be addressing the matters set out in paragraph (c) of the Order in Council.

A. Part I Process

Part I will be conducted by way of public hearings to be held in Walkerton, at which witnesses will give evidence under oath or affirmation, and at which the witnesses will be examined and cross-examined. Parties with standing will make closing submissions at the end of Part I.

The Rules of Procedure and Practice which have been developed for Part I have been published on the Commission website at www.walkertoninquiry.com. These have been modelled on the rules used in other public inquiries. I thought that it would be useful to publish these Rules before the hearings on standing. However, if any party granted standing wishes to make submissions on the Rules, it should do so in writing by September 22, 2000. Any changes will be published on the Commission website. Parties granted standing should visit our website regularly for information on practical details and scheduling.

B. Part II Process

Because of the policy nature of the issues, Part II will not proceed by formal evidentiary hearings. Instead, in order to make its work accessible and provide an opportunity for public participation, Part II will proceed in three phases. These three phases encompass Commission Papers, Public Submissions, and Public Meetings as discussed below. They will proceed concurrently with Part I.

(i) Commission Papers

In the first phase, the Commission will arrange for the preparation of papers (the "Commission Papers") from recognized experts on a broad range of relevant topics. These Commission Papers will, among other things, describe current practices in Ontario, describe current practices in other jurisdictions, identify difficulties and review

alternative solutions. A draft list of study topics has been published on the Commission website.

I have established a Research Advisory Panel (the "Panel"). The Panel will assist me in identifying the subject matter of the Commission Papers and who should be retained to prepare them. The Panel, under my direction, will also monitor the progress of Commission Papers and provide advice and direction to the various authors as needed. The Commission will set and publish a deadline by which all Commission Papers must be completed and the Papers will thereafter be published, in draft, on the Commission website.

(ii) Public Submissions

In the second phase, the Commission will invite any person or group with an interest in the subject matter of Part II of the Inquiry to make submissions in writing (the "Public Submissions") to the Commission about any matter relevant to Part II, including the matters reviewed in the Commission Papers. The Commission will set and publish a deadline by which all Public Submissions must be received. The Public Submissions will be made available for public review.

(iii) Public Meetings

In the final phase of Part II, I will convene a number of public meetings relating to the major topics comprising Part II of the Inquiry. The format of the public meetings will be tailored to the topics discussed and may vary among meetings.

I will preside over the public meetings. They may also include participation by the relevant authors of Commission Papers, representatives of those who have been granted standing in Part II and who in my view will make a contribution to the meeting, and selected members of the Research Advisory Panel. Based upon the Public Submissions received, I may invite other persons or groups whom I conclude would make a useful contribution to the discussions.

II. STANDING AND FUNDING

The Commission published a Notice of Hearing which invited interested parties to apply for standing. I received 47 applications for standing, some of them involving multiple individuals or organizations. The applications were heard in Walkerton from September 5 to 7, 2000.

A. Part I Standing

There are two types of standing, full and special, in Part I. Both types may be specifically limited to those portions of the Inquiry that are relevant to the interests of the party which formed the basis for my decision to grant standing.

(i) Full Standing

I have granted full standing in Part I to persons or groups who have demonstrated that they have a substantial and direct interest in the subject matter of the Inquiry pursuant to section 5(1) of the *Public Inquiries Act*, R.S.O. 1990, c.P.41 (the "Act"). In some cases I have also granted full standing, on a discretionary basis, even though the party does not have an interest under section 5(1). I have exercised this discretion on the basis of my assessment of the contribution that such a party will make to the Inquiry. In either case, I have limited full standing to those portions of the Inquiry that are relevant to the party's interests. Parties will be advised by Commission counsel when issues relevant to their interests will arise. Full standing will include:

1. access to documents collected by the Commission subject to the Rules of Procedure and Practice;

2. advance notice of documents which are proposed to be introduced into evidence;

3. advance provision of statements of anticipated evidence;

4. a seat at counsel table;

5. the opportunity to suggest witnesses to be called by Commission counsel, failing which an opportunity to apply to me to lead the evidence of a particular witness;

6. the opportunity to cross-examine witnesses on matters relevant to the basis upon which standing was granted;

7. the opportunity to review transcripts at Commission offices (a copy of the transcript may be purchased from the court reporter);

8. the opportunity to make closing submissions; and

9. the opportunity to apply for funding to participate in Part I.

(ii) Special Standing

I have granted special standing in Part IA to some parties who have been granted full standing in Part IB. Even though these applicants do not have an interest in Part IA under s.5(1) of the Act, I consider that their involvement through special standing will be of assistance to me. Special standing will include:

1. the matters listed under numbers 1, 2, 3, 5, 7, 8 and 9 above; and

2. the opportunity to suggest areas for examination of a certain witness by Commission counsel, failing which an opportunity to request leave to examine the witness on such areas.

B. <u>Part II Standing</u>

I have granted standing to persons or groups who in my view are sufficiently affected by Part II of the Inquiry or who represent clearly ascertainable interests and perspectives that I consider ought to be separately represented before the Inquiry. Standing for Part II of the Inquiry will involve:

1. access to documents collected by the Commission which relate to Part II subject to the Rules of Procedure and Practice;

2. the opportunity to make Public Submissions on any matter relevant to the Commission's mandate in Part II, including papers which respond to Commission Papers;

3. the opportunity to participate directly in one or more public meetings where the Commissioner is of the view that such participation would make a contribution to the subject matter of the meeting; and

4. the opportunity to apply for funding to participate in Part II.

C. Principles

(i) Standing

Before separately addressing each of the applications, I think it is useful to summarize the general principles that have guided my decisions on standing and funding.

- It is essential that the Inquiry be full and complete and that I consider all relevant information and a variety of perspectives on the issues raised in the Order in Council.

- Commission counsel will assist me throughout the Inquiry. They are to ensure the orderly conduct of the Inquiry and have standing throughout. Commission counsel have the primary responsibility for representing the public interest, including the responsibility to ensure that all interests that bear on the public interest are brought to my attention. Commission counsel do not represent any particular interest or point of view. Their role is not adversarial or partisan.

- Applicants are granted standing only for those portions of the Inquiry that are relevant to their particular interest or perspective.

- Parties may be granted special standing in Part IA, rather than full standing, in order to make the work of the Commission accessible to parties who do not have a substantial and direct interest in the subject matter of Part IA, but who nevertheless represent interests and perspectives that I consider to be helpful to

my mandate. Those parties will be able to participate in the Inquiry in a meaningful way through the provision of documents, the opportunity to suggest evidence and the opportunity to make closing submissions.

- In order to avoid repetition and unnecessary delay, I have grouped certain applicants into coalitions, as discussed below. I have done this in situations where the applicants have a similar interest or perspective, where there is no apparent conflict of interest and where I am satisfied that the relevant interest or perspective will be fully and fairly represented by a single grant of standing to the parties as a group.

- In the event of a change in circumstances affecting a grant of standing, a party whose participation has been limited to a particular portion of the Inquiry, who was granted special standing or who has been grouped into a single grant of standing, may apply for a change in its standing.

- Witnesses in Part I who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. The witness may be represented by counsel for the purposes of his or her testimony and to make any objections thought appropriate.

I mentioned the formation of coalitions as one of the principles that has guided my decisions on standing. There are a large number of applicants with an interest or perspective that I consider important in Part I. Many of these share common interests and perspectives. In order to make Part I manageable, I have formed coalitions comprised of applicants whose interests and perspective coincide and who do not have a conflict of interest that would render a coalition unworkable.

In directing that applicants participate through a coalition I recognize that circumstances may develop that result in a coalition becoming unsuitable for a member

of a coalition on one or more issues. With this in mind, I have provided for flexibility, allowing members to request separate standing should such a situation arise.

In my view the formation of flexible coalitions achieves a fair balance between the desire to have important interests and perspectives represented and the need to have an inquiry that is manageable. I am asking that the counsel and principals of applicants who have been joined in a coalition make all efforts to work within the coalition. Cooperation and reasonableness are essential. Even with coalitions, the hearings in some stages of Part I will be complex and may be protracted. In my view, the alternative of separate standing for everyone is simply not acceptable.

(ii) Funding

The Order in Council provides that I may make recommendations to the Attorney General for funding for parties granted standing. To qualify for a funding recommendation, a party must be able to demonstrate that it would not be able to participate in the Inquiry without such funding. In addition, the party must have a satisfactory proposal as to the use it intends to make of the funds and how it will account for the funds.

In addition, I have considered the following:

- the nature of the party's interest and proposed involvement in the Inquiry;
- whether the party has an established record of concern for and a demonstrated commitment to the interest it seeks to represent;
- whether the party has special experience or expertise with respect to the Commission's mandate; and
- whether the party can reasonably be included in a group with others of similar interests.

At this time, I am not recommending payment for experts to be called by those with standing in Part I. The primary responsibility for calling experts lies with Commission counsel who will be open to suggestions from parties as to the types and names of experts to be called. Experts called by Commission counsel will be paid by the Commission.

The guidelines issued by the Attorney General for funding include the payment of counsel fees and disbursements. Disbursements for experts to assist counsel in preparing for cross-examination are not included in the guidelines.

I have decided not to make any recommendations for Part II funding at the present time although I anticipate that I will be doing so in the months to come. The Commission has published a list of proposed Commission Papers and welcomes suggestions for additions or changes. Parties with standing may suggest the names of experts to prepare papers, may offer to prepare some of the Commission Papers or may independently have papers prepared on subjects relevant to the Commission's mandate in Part II.

I anticipate that when the Commission Papers are published, parties with standing will respond with comments or criticism. At that time, I will consider applications for funding for the preparation of papers in response to Commission Papers and for attendance at public meetings. I will also consider applications for funding for counsel fees for Part II at that time. I would observe now, however, that given the nature of the Part II process, I do not foresee significant funding for legal fees.

III. APPLICATIONS FOR STANDING

I turn now to the individual applications and I address them generally in the order they were heard, although in some areas I have generally grouped the applicants according to their interests and perspectives.

A. Walkerton Groups and Residents

There are four applicants who seek to represent the interests and perspectives of the residents of the Town of Walkerton. Each also asks that I make a recommendation for funding.

The residents of Walkerton were seriously affected by the water contamination and have a significant interest in the subject matter of Part I of the Inquiry. Given the tragedy that the residents have suffered, their interests must be represented. I have been told that many residents consider that they have different interests and perspectives than the Town and the Walkerton Public Utilities Commission (the "PUC").

All four applicants have one important interest in common. In one form or another they seek to bring before the Inquiry the nature, scope and type of impact – physical, personal and economic – experienced by the residents of the Town. The impact of the contamination is an important part of the work of the Inquiry. In recognition of this, I held informal hearings in July during which I heard directly from over 50 individuals and groups about the impact of this tragedy on their lives. I anticipate that, in Part I, Commission counsel will be calling some evidence, including expert evidence, dealing with the physical and medical problems experienced by those who were affected by the contaminated water. In Part II, one of the proposed papers will examine the economic and other long term effects of the contamination.

The residents of Walkerton also have a significant interest in the circumstances that led to the contamination and the various causes that may have contributed to it. I expect that the evidence that relates to the issues of what happened and why will form a major part of the evidence that will be called in Part I.

I have asked applicants with similar interests or perspectives to attempt to form coalitions for purposes of standing and funding. I am satisfied from the written material and the oral submissions that there is a sufficient difference in the perspective of two of the groups who have applied to represent the residents that requiring them to be

represented by a single coalition would be unrealistic. The Walkerton residents have the greatest interest in Part I. Their voices must be heard even if those voices deliver somewhat different messages. As a result, I am prepared to make more than one grant of standing to represent the interests and perspectives of the residents.

The Concerned Walkerton Citizens (the "CWC") is a group comprised of over 500 residents of Walkerton and the immediate area. It was formed specifically in response to the events of May 2000. It is represented by the Canadian Environmental Law Association ("CELA") and seeks standing in Parts I and II and funding for counsel and experts in both. The CWC represents a large number of residents and importantly has demonstrated a serious, genuine and continuing concern about the issues raised by the Inquiry. I am satisfied that the CWC should be granted full standing for Parts I and II.

The Walkerton Community Foundation also seeks standing and funding for Parts I and II. This is a broadly based group comprised of the Walkerton Rotary Club, the Saugeen Masonic Lodge, the Knights of Columbus, the Knights of Columbus Auxiliary, the St. John Ambulance Society, the Walkerton Lions Club, the Walkerton Optimists Club, the Royal Canadian Legion Branch 102 and a "Community Members" group. The Foundation was also formed in response to the contamination. It is incorporated and registered as a charitable foundation. It appears that the Foundation has a different perspective than the CWC on the events that occurred in May of this year and in particular on the possible causes of the contamination of the water supply. The member organizations of the Foundation have contributed an enormous amount of time and service to the Walkerton community both before and after the tragedy. I am satisfied that the Foundation should also be granted full standing for Parts I and II.

The Walkerton District Chamber of Commerce has applied for standing in Parts I and II, specifically to examine "the existing communication mechanism for notifying of a boil water advisory and the economic implications of the absence of potable water." I am satisfied that insofar as Part I is concerned the interests of the Chamber are congruent with those of the Foundation and, in my view, the interests of the Chamber can be fully

and fairly represented within the standing granted to the Foundation. In this regard, I appreciate the efforts that the Foundation and the Chamber have made to join with one another and encourage them to continue those efforts. I am not going to grant standing to the Chamber in Part I. However, if there is difficulty in arriving at a satisfactory arrangement between the two groups I may be spoken to. As to Part II, I see no need to join the two. I grant the Chamber separate standing in Part II for issues relating to the economic impact of the contamination upon the Walkerton community and issues relating to the communication of similar events by public authorities generally.

Finally, the law firm of Siskind Cromarty seeks standing in Part I for injured victims comprised of three separate groups:

- The putative plaintiffs in a proposed class action;
- parents of seriously injured children; and
- 200 individual residents of Walkerton who suffered losses as a result of the tragedy.

In its application the "Injured Victims" group says "... it is distinguishable from groups such as the Concerned Walkerton Citizen's group which represents itself as a non-partisan group seeking intervenor status at the Inquiry." The group states further that "[t]he Injured Victims of the contamination, while clearly partisan and motivated by personal interests, are, nonetheless, a critical voice to be represented at Part I of the Inquiry."

The objective of the group is to ensure that the perspective of the injured victim is brought before the Inquiry. What defines this group is their membership in a proposed class action or the fact that they have retained the same lawyers to represent them. Neither of these characteristics gives them an interest in the Inquiry. The interest that entitles them to standing arises from the fact that they are residents of Walkerton and, like many others, have suffered injury and loss from the contamination.

As I have said above, the perspective of the residents and those who have suffered must be heard. However, it is not feasible for every resident, or indeed every group of residents, who has suffered to be represented separately. Lines must be drawn. I am satisfied that the interests of the members of this group in the issues of how and why the contamination occurred can and should be represented by either of the two parties to which I have granted standing. The CWC and the Foundation have shown a genuine and ongoing interest in the issues raised by the Inquiry and between them, I believe, will fully and fairly represent the interests of all the residents.

While the impact of the contamination will undoubtedly be examined, it will not be a major focus of Part I. The relief sought by the Injured Victims in the lawsuit is something that will be addressed in a separate proceeding and involves issues that go beyond the mandate of this Inquiry. That said, I am nonetheless of the view that the Injured Victim group should be granted standing in Part IA, limited to issues relating to the impact of the contamination upon them.

In reaching this conclusion I expect that Commission counsel and counsel representing the CWC and the Foundation will be open to receiving suggestions and ideas from members of this group to ensure that their views are fully and adequately represented in those parts of the Inquiry in which they have been granted standing. If there is difficulty in this regard I may be spoken to.

I turn next to the question of funding for the residents of Walkerton. Paragraph 5 of the Order in Council provides that I may make recommendations for funding where in my view, "the party would not otherwise be able to participate in the Inquiry without such funding." CELA has agreed to represent the CWC. Counsel provided by CELA will be paid through the Ontario Legal Aid Plan. CELA will be able to act for the CWC without funding from the Attorney General. As a result, the CWC has not met the requirements of the Order in Council and I am not authorized to make a recommendation for funding of a counsel fee. However, the funding CELA receives from Legal Aid does not include disbursements. I will therefore recommend the payment of disbursements by

the Attorney General. CELA has requested payment of fees for a case worker and a community worker. I understand that the Attorney General's guidelines do not include such expenses. In the circumstances, I will recommend the payment of disbursements for two counsel for CWC.

As to the request of the CWC for the payment of fees for experts to be called in Part I, I have suggested that CWC propose the names of the experts that it wishes to be called in Part I to Commission counsel.

I have granted standing to the CWC in Part II. It remains open to the CWC to make application for Part II funding.

I am satisfied that the Foundation has met all criteria for funding. I propose to recommend funding for one counsel for Part I for the Foundation.

I do not anticipate that the involvement of the "Injured Victims" will be extensive. Given the nature of the ties that bind this group I do not think it appropriate to recommend funding.

B. Government of Ontario

In light of its clear interest in the issues raised in the Order in Council, I am satisfied that the Government of Ontario meets the criteria for standing for both Parts I and II.

C. Farming and Agricultural Groups

The Commission received eight applications for standing from groups whose focus is on issues related to farming and agriculture. These groups have in common the fact that they are all interested in the potential impact of the Inquiry on issues relating to farming and agriculture. This interest encompasses an environmental perspective. Each also brings with it a different and potentially unique perspective. The groups are:

1. the Christian Farmers Federation, an organization with more than 4,400 family farm members that approaches agricultural issues from the perspective of "the Christian value system that motivates [its] members";

2. the Dairy Farmers Federation of Ontario, which represents approximately 6,500 dairy farmers in the Province;

3. the Ontario Cattle Feeders Association, which represents feedlot operators who feed approximately 55 percent of the fed cattle in Ontario;

4. the Ontario Cattlemen's Association, which represents 25,000 beef producers across Ontario;

5. the Ontario Farm Animal Council, a coalition of groups within the livestock and processing industry, whose mandate is to provide communication and education links between livestock producers, processors and the consumer;

6. the Ontario Federation of Agriculture, which is made up of 51 county and district federations representing 43,000 farm family members across Ontario;

7. the Ontario Pork Producers Marketing Board, which represents 5,100 pork producers in the Province; and

8. the Ontario Farm Environmental Coalition ("OFEC"), which is a coalition of agricultural groups (including many of the organizations mentioned above) formed principally to advance an agricultural and farming position on environmental issues.

All eight groups have agreed to be represented by OFEC should standing be granted to them in Part I of the Inquiry. However, each has applied for separate standing in relation to Part II.

I have no difficulty in concluding that these groups represent a clearly ascertainable interest and perspective in relation to farming and agricultural issues, which I consider important to my mandate in Part I. I am mindful of the fact that no individual or group which represents farming and agriculture and has a direct interest in Part I has applied for standing. As a result, if I do not grant standing to OFEC, the agricultural and farming perspective would not be directly represented. In these circumstances, I exercise my discretion and grant standing to OFEC for Part I in relation to farming and agricultural issues.

I do not have sufficient information on the financial position of OFEC and its members to determine whether they qualify for funding. If OFEC wishes to pursue funding, it should submit the necessary information to me by September 22.

In relation to Part II it is clear to me that the eight groups, taken together, have the type of interest in this part of the Inquiry which merits standing. I am told that the different perspectives which they represent may cause them to take different positions on the broader policy issues which will arise in Part II and that there may be issues in which some but not all groups wish to participate. I accept that there is a greater possibility for such divergence in Part II and I am prepared to grant standing separate to the extent necessary to accommodate their different perspectives.

As noted at the outset, I am not making any decisions with respect to funding in Part II of the Inquiry at this time.

D. Members of CUPE Local 255

CUPE Local 255 seeks standing on behalf of its members Allan Buckle, Robert McKay, Tim Hawkins, Steve Lorley, Vivian Slater and Ellen Dentinger. These are seven of the eight fulltime unionized employees of the Walkerton PUC. Mr. Frank Koebel, who is a member of CUPE Local 255, has been granted separate standing.

The Walkerton PUC bargaining unit includes employees whose duties involve both water and hydro-electric power services. Allan Buckle is the primary employee involved on the water side of the PUC and has been actively involved in maintenance and monitoring of the PUC's wells as well as water sample testing. Robert McKay, Tim Hawkins and Steve Lorley are primarily employed as hydro linespersons but from time to time have assisted employees working on the "water side" of the PUC. The other two applicants, Vivian Slater and Ellen Dentinger, are employed as clerical staff by the PUC. Their duties include sending water samples to the private sector laboratories for testing and forwarding telephone messages and faxes from the laboratories.

In my view, only Allan Buckle, who by virtue of the performance of his duties was intimately involved in the water side at the relevant time, should be granted standing personally. I grant standing to Mr. Buckle for Part I insofar as his personal interests are affected. I also recommend funding for one counsel, for Mr. Buckle, together with reasonable disbursements, but only for the purposes of representing Mr. Buckle's personal interests. If the other individual applicants are called as witnesses, they will be entitled to counsel and limited standing in accordance with Rule 17 of the Rules of Procedure and Practice. If they choose, the bargaining unit members may be represented by counsel for CUPE Local 255 at that time.

E. The Bargaining Agents

The Commission received applications for Part I standing from CUPE Local 255, and from two provincial bargaining agents, OPSEU and PEGO. I discuss these applications together, as I am directing a coalition be formed.

CUPE Local 255 seeks standing in Part I on its own behalf, as a separate institutional entity representing the collective interests of unionized employees of the Walkerton PUC. CUPE Local 255's written submissions state that "the Local represents the collective interests of the employees in pursuing the proper, efficient and safe operation of the workplace and in ensuring that the employees are properly trained and equipped for their jobs."

The Ontario Public Service Employees' Union ("OPSEU") has applied for full standing for Parts I and II of the Inquiry. OPSEU submits that it would bring three major interests or perspectives to the Inquiry, as it is:

(a) the trade union representative for approximately 2000 employees particularly concerned with water quality and delivery issues, including Ministry of the Environment ("MOE") staff, Ontario Clean Water Agency ("OCWA") staff, employees dealing with agricultural issues, and technical and professional non-medical staff at local Health Units;

(b) the trade union for most provincial government and public sector employees, who have concerns such as funding, downsizing, alternative service delivery and privatization; and

(c) the representative of individual employees involved directly or indirectly in the events at Walkerton, including workers who work or reside in Walkerton.

Four employees of the MOE Owen Sound office for whom OPSEU acts as bargaining agent have retained other counsel. OPSEU has offered to provide legal representation to other OPSEU members at the Part I hearings, should this be necessary.

The Professional Engineers and Architects of the Ontario Public Service (PEGO) has applied for standing for Parts I and II of this Inquiry. PEGO represents those employed in the public service as engineers, including those employed by OCWA, the Ministry of the Environment and other directly involved government departments. PEGO's counsel, Mr. Fellows, noted that engineers in the public service are involved in all aspects of water regulation. They may be responsible for approval of water treatment and distribution facilities, the setting of standards, the imposition of conditions on the operation of water facilities, and policy recommendations and advice to government with respect to the operation of water facilities. Mr. Fellows stated that the issue of how the Province regulates water treatment and distribution facilities will affect the role of engineers in the public service.

There is a significant congruence of interests among CUPE Local 255, OPSEU and PEGO in Part I of the Inquiry. I believe that all three bargaining agents will assist the Commission by providing valuable perspectives with respect to the operational aspects of government policies, procedures and practices. Further, I consider the experience and expertise of the union members to be valuable in the identification of systemic issues and solutions in this area. Given the congruence of interests, the valuable perspectives which the bargaining agents will bring, and the lack of conflict except as discussed below, I make a single grant of standing in Part I to CUPE Local 255, OPSEU and PEGO. In light of OPSEU's broad representation of provincial government employees, it may be

appropriate for OPSEU to take the lead in this coalition. Other than potentially providing legal representation for their members who may be called as witnesses in Part IA, I do not find an interest which warrants full standing and therefore grant special standing to OPSEU in Part IA. I grant the Bargaining Agents Coalition full standing in Part IB. The grants of standing to this coalition in both Part IA and IB are limited to those issues affecting municipal, public sector and provincial government employees.

Counsel for PEGO identified a potential conflict with both CUPE and OPSEU, bargaining agents whose members are primarily involved in front-line field work, including testing and inspections. PEGO notes the potential difference that would arise with respect to issues of decredentialization. PEGO will be addressing issues regarding functions relating to water treatment and distribution requiring the professional judgment of engineers. In this regard alone, I grant separate standing to PEGO in Part IB; otherwise their participation is to be through the Bargaining Agent Coalition. I also recognize that certain issues may result in a different perspective for the Walkerton PUC employees as opposed to provincial employees. Should this situation arise, I am prepared to grant separate standing to Local 255 in Part IB on those issues only. If other conflicts arise, then any of the three coalition partners may apply for separate standing on an issue-specific basis in Part IB.

I grant separate standing to both PEGO and OPSEU in Part II.

PEGO has also requested funding. It is not a national body, but a small organization with 410 working members. The contingency fund referred to in the annual statements filed by PEGO is in fact PEGO's strike fund. In light of the relatively small number of members employed and the lack of a national organization, I recommend funding for PEGO for one counsel limited to Part IB issues involving decredentialization only. I defer my decision on Part II funding.

OPSEU made no request for funding and I make no recommendation in this regard.

I defer CUPE Local 255's request for funding for Part IB in the hope that its national union will see fit to support the Local. I note that if CUPE Local 255 represents its member Allan Buckle, Local 255 will receive funding for its representation of the interests of Mr. Buckle. In the event that Local 255 is granted separate standing for Part IB, it may apply to me for a recommendation for separate funding with respect to those limited interests at that time.

F. CUPE National

CUPE National has applied for standing in Part II of the Inquiry. In Ontario, CUPE represents over 40,000 municipal employees. Within many of these municipal locals, CUPE members operate and maintain water and wastewater facilities. In 1997 CUPE National identified the issue of safe, clean public water as a primary focus for its activities. It has established a "Water Watch" campaign, the objective of which is to halt the privatization of municipal water services, to identify threats to water quality, to promote access to safe water for all local residents, and to promote water conservation. I am of the view that CUPE National is in a position to assist the Commission in Part II, in light of its expertise in water and wastewater services, privatization and employment relations, as well as the front-line expertise of its members in water delivery in Ontario. I grant CUPE National standing for Part II of the Inquiry.

G. Dr. McQuigge, Mr. Patterson and Ms. Sellars

Dr. Murray McQuigge, David Patterson and Mary Sellars have applied for standing collectively in Parts I and II. Dr. McQuigge is the Medical Officer of Health for the Bruce Grey Owen Sound Health Unit (the "Health Unit"). David Patterson is the Assistant Director of Health Protection for the Health Unit, and a public health inspector under the *Health Protection and Promotion Act*, R.S.O. 1990, c.H.7 ("HPPA"). Mary Sellars is Dr. McQuigge's Executive Assistant. All three were involved in responding to the water contamination in Walkerton, the boil water advisory issued by the Medical Officer of Health, and the subsequent remediation efforts. Mr. Cherniak, co-counsel for the three applicants, submits that their interest is in determining the cause of the outbreak,

the contributing factors and the solution to the problem. Mr. Cherniak also submits that the three applicants are substantially and directly affected, since they were in the "eye of the storm" as the contamination and its effects spread through the area served by the Health Unit.

Mr. Cherniak commented on the concurrent application of the Health Unit, which is a Local Board of Health under the HPPA and the employer of these three applicants. He noted that, pursuant to the statutory provisions of the HPPA, the role of the Medical Officer of Health is clearly separate and different from that of the Health Unit. Further, he said that Dr. McQuigge had duties placed upon him by the Ontario Drinking Water Objectives of the MOE that were not shared by the Health Unit.

Given the extensive personal involvement of Dr. McQuigge and the importance of his role as Medical Officer of Health in relation to the Walkerton contamination, I grant full standing to Dr. McQuigge on public health issues in Part I. I do not find it necessary to grant standing to Mr. Patterson or Ms. Sellars. I am also prepared to grant Dr. McQuigge standing in Part II although I would expect that his participation might usefully be joined with the Health Unit and ALPHA whose applications I discuss below. Dr. McQuigge, Mr. Patterson and Ms. Sellars have not sought funding and accordingly I make no recommendation in this regard.

H. Bruce Grey Owen Sound Health Unit

The Health Unit has separately applied for standing in Parts I and II of the Inquiry. Mr. Middlebro', counsel for the Health Unit, noted that it is named as a defendant in a $1.3 billion civil suit relating to the Walkerton contamination. Mr. Middlebro' stated that, under the HPPA, the Health Unit is not able to direct the nature of the Medical Officer of Health's opinion, but remains responsible for his actions. Mr. Middlebro' quite properly conceded that at this point in time there is no conflict between the interests of the Health Unit and those of Dr. McQuigge, Mr. Patterson and Ms. Sellars.

I do not find that the Health Unit has a substantial and direct interest in Part I within the meaning of s.5(1) of the *Public Inquiries Act*. Dr. McQuigge has been granted standing in Part IA. I expect that the Health Unit will have the same interest and perspective in Part IA issues as Dr. McQuigge. I am not prepared to grant the Health Unit standing in Part IA. If a conflict does arise, the Health Unit may reapply.

I grant the Health Unit standing in Part IB with respect to public health issues. I find that the Health Unit shares the same interest in Part IB as the Association of Local Public Health Agencies ("ALPHA"), whose application I address below. I grant these two applicants a single standing in Part IB limited to public health issues. These two applicants will probably share the same interest on many issues with Dr. McQuigge. Where there are such common interests, only one cross-examination may be conducted. I also grant standing to the Health Unit in Part II but would encourage it to participate jointly with Dr. McQuigge and ALPHA. No application was made for funding by the Health Unit and I make no recommendation in that regard.

I. Association of Local Public Health Agencies

The Association of Local Public Health Agencies has applied for standing and funding in respect of both Parts I and II. ALPHA is a not-for-profit organization of professional public health care providers, whose primary membership consists of Medical Officers of Health and the 37 Boards of Health of Ontario. I note that the Health Unit is a member of ALPHA, and Dr. McQuigge has served as Treasurer of ALPHA. There are also seven affiliate member associations consisting of the Association of Supervisors of Public Health Inspectors of Ontario, Association of Ontario Public Health Business Administrators, Association of Public Health Epidemiologists of Ontario, Health Promotion Ontario, Ontario Association of Public Health Dentistry, Ontario Society of Nutrition Professionals in Public Health, and Public Health Nursing Management. ALPHA's counsel noted that a primary contribution of ALPHA would be to assist the Commission in knowing expected procedures and practice in safe water delivery and protection.

I grant standing to ALPHA in Part IB jointly with the Health Unit, as described above. Given that the Health Unit has not applied for funding, I do not propose to provide funding for this group in Part I. I grant ALPHA's application for standing for Part II of the Inquiry, and will defer my decision as to funding for that part.

J. Ontario New Democratic Party

A group comprised of the Ontario New Democratic Party (the "ONDP"), the New Democratic Party Caucus of the Ontario Legislature, Howard Hampton, Leader of the Ontario New Democratic Party and Leader of the New Democratic Party Caucus, and Bud Wildman, former Minister of the Environment and Energy (the "ONDP Group") has applied for standing and funding in Parts I and II.

I recognize that the ONDP Group has demonstrated a serious and long-standing concern for environmental issues. However, I am not satisfied that it meets the criteria for standing set out in the *Public Inquiries Act* nor, for the reasons set out below, do I consider that this is a case in which I should exercise my discretion to grant standing.

In my view, the ONDP Group does not have a substantial and direct interest in the subject matter of the Inquiry as that term is used in s.5(1) of the Act. I do not anticipate that the interests of the members of this group will be substantially affected by findings or recommendations that may be made in my report.

Section 5(2) of the Act provides that no findings of misconduct can be made against any person in a report following a public inquiry unless that person has been provided reasonable notice of the alleged misconduct and is given an opportunity to participate in the inquiry. On the basis of information now available, Commission counsel do not intend to provide a s.5(2) notice to the ONDP Group.

This applicant makes two submissions in arguing that it has an interest that may be affected by findings to be made in Part I. First, it says that the Premier of Ontario has called the policies, practices and procedures of the pre-1995 ONDP government into

question. In response to a question from the press, the Premier apparently said that certain changes in water testing and reporting standards had been made by the previous ONDP government. The ONDP Group suggests that this comment carried with it the innuendo that these changes contributed to what happened in Walkerton. The ONDP Group submits that it should be afforded an opportunity to participate in the Inquiry in order to deal with this allegation. I do not think that the Premier's comment gives rise to the type of interest that warrants standing under s.5 of the Act. The comment seems to have been made as part of the political process in which one politician speaks on an issue and on which an opposing politician may respond in the same forum. It is clearly open to the members of this group to respond to this comment in a forum other than this Inquiry.

I am aware that a political party was granted standing in the Houlden Inquiry. In that inquiry, however, the mandate of the Commissioner included an allegation of wrongdoing involving the political party which was granted standing. The present Inquiry is different. There is no allegation of wrongdoing against the ONDP Group in my mandate. If there are allegations of misconduct, improper behaviour, or the like directed at this group during the Inquiry, I will entertain an application for standing to answer such allegations.

The second ground upon which the ONDP Group claims an interest for which it ought to be granted standing is that the ONDP was vocal in calling for the government to establish this Inquiry. In my view, the fact that a political party or its members call for the government to establish a public inquiry, without more, does not create an interest within the meaning of s.5(1) of the Act.

Finally, I do not think that this is a case in which I should exercise my discretion to grant standing. I say this for two reasons. First, parties who have been granted standing will bring a sufficiently broad range of perspectives to enable me to fulfil my mandate. In granting standing, I have attempted to ensure that all perspectives, and in particular those such as the ones held by this applicant, which question the effect of government policies, practices and procedures, are fully represented. It is essential that there be a

thorough examination of these factors in relation to the events in Walkerton. I am satisfied that this will occur.

The second reason why I am not inclined to grant this group standing is that it is, in my view, generally undesirable to use public inquiries to have political parties advance their positions or policies. There are other more appropriate arenas for them to do so. Mr. Jacobs, counsel for the ONDP Group, recognized this concern and assured me that this was not the motivation underlying the application. I accept Mr. Jacobs' assurance without reservation. Nevertheless, I think there is a danger that this applicant's participation could be viewed by the public as politicizing the Inquiry in a partisan way. To the extent possible, that result should be avoided.

Finally, I note that the considerations in granting standing to a political party differ from those which apply to a government. Governments play a different role and have different responsibilities than do political parties. Moreover, the ONDP, unlike any other applicant, will have an opportunity to participate in the subject matter of the Inquiry by responding to my report in the Legislature.

K. The Municipality of Brockton and Related Applicants and the Public Utilities Commission

The Corporation of the Municipality of Brockton, the successor municipality to the Town of Walkerton, (referred to collectively as the "Town") has applied for standing and funding in Part I of the Inquiry, together with a number of individuals who by employment, contract or office are associated with the Town. The co-applicants are: Mayor David Thomson of Brockton ("Mayor Thomson"); Audrey Webb, Deputy Mayor; Roland Anstett, David Jacobi, Wilfred Lane, Jack Riley and Glen Tanner, the present Councillors of Brockton; the Chief Administrative Officer of Brockton, Richard Radford; former Mayor James Bolden; Don Carroll, Clayton Gutscher, David Mullen and Mary Ramsay (with the exception of one individual, the 1988 Councillors of Walkerton); and Steven Burns, a Professional Engineer with B.M. Ross and Associates Limited, in his capacity as a consultant performing the role of the Town's engineer. Mr. McLeod,

counsel for the group, also proposed standing be granted to any other staff member or agent who falls within s.5(1) of the *Public Inquiries Act*, who wishes to be represented by him, and who executes a waiver and consent document and a retainer agreement. The Town and its co-applicants have applied for standing and funding in Part I of the Inquiry.

The PUC has also applied for standing and funding in Part I of the Inquiry.

Mr. McLeod has assured me that there is no conflict in his firm's representation of the Town and the individuals. He further states that he has sought and received consents and waivers with respect to the joint retainer, and has established, with the consent of his clients, a mechanism pursuant to which future conflicts may be resolved in order of priority of representation.

I turn then to the interests of the Town. The Town owns the water treatment and distribution system, which is operated by the PUC pursuant to the terms of the *Public Utilities Act*, R.S.O. 1990, c.P.52. Section 2(1) of the *Public Utilities Act* provides that:

> The corporation of a local municipality may, under and subject to the provisions of this Part, acquire, establish, maintain and operate waterworks, and may acquire by purchase or otherwise and may enter on and expropriate land, waters and water privileges and the right to divert any lake, river, pond, spring or stream of water, within or without the municipality, as may be considered necessary for waterworks purposes, or for protecting the waterworks or preserving the purity of the water supply.

Section 38 of the *Public Utilities Act* provides that:

> ... the council of a municipal corporation that owns or operates works for the production, manufacture or supply of any public utility or is about to establish such works, may, by by-law passed with the assent of the municipal electors, provide for entrusting the construction of the works and the control and management of the works to a commission to be called The Public Utilities Commission....

Pursuant to section 38(6), the control and management of the works are vested in the council and the PUC ceases to exist upon the repeal of a by-law establishing a PUC.

The powers of a PUC are set out in s. 41(1) of the *Public Utilities Act*:

> Subject to subsection (4), where a commission has been established under this Part and the members thereof have been elected or where the control and management of any other public utility works are entrusted to a commission established under this Part, all the powers, rights, authorities and privileges that are by this Act conferred on a corporation shall, while the by-laws... remain in force, be exercised by the commission and not by the council of the corporation.

The *Public Utilities Act* establishes that there are to be three to five elected commissioners, including the head of council as a commissioner *ex officio*. The PUC is required to report to council annually, providing a statement of revenue and expenditure.

Effective January 1, 1999, both the PUC and the Town of Walkerton were subject to a restructuring order by the Minister of Municipal Affairs under the *Municipal Act*, R.S.O. 1990, c.M.45 (the "Order"). Section 2(4) of the Order amalgamated the three former townships under the name "The Corporation of the Township of Brant-Greenock-Walkerton", subsequently renamed "Brockton".

Pursuant to sections 45-46 of the Order, the PUC of the Town of Walkerton was dissolved, and "The Walkerton Public Utilities Commission" was established. Section 46(2) of the Order provides that:

> The commission established under subsection 1 shall distribute and supply electrical power and produce, treat, distribute and supply water to the geographic area of the former Town of Walkerton.

Section 46(3) provides that the commission is subject to the *Public Utilities Act*. Mr. McLeod states that, since May 25, 2000, the PUC has contracted with the Ontario Clean Water Agency to operate the water treatment and distribution system.

The relationship between the Town and the PUC can be fairly summarized by saying that the PUC operates the water treatment and distribution system on behalf of the owner, the Town.

Mr. McLeod identified the interest of the Town in Part I of the Inquiry in relation to the fact that it is the owner of the water treatment and distribution system. He identified specific attributes of ownership which he asserted are relevant to the Town's interest. He noted that, as owner, the Town faces potential civil liability and is a defendant in a civil suit relating to the contamination. He also referred to the Town's exposure to regulatory initiatives of government, and specifically noted that, since at least 1997, the MOE's practice and policy has been to issue orders or enforce regulatory provisions under the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40, against the Town as owner of the waterworks.

Mr. McLeod agreed that there was the possibility of some congruence of interests with the PUC with respect to events prior to May, 2000. He stated that, since the contamination, the Town and the PUC have been working together on remediation and compliance issues. He also pointed out that, under the *Public Utilities Act*, the Mayor of the Town is an *ex officio* member of the PUC.

Mr. Prehogan, counsel for the PUC submits that, since the PUC was responsible for the provision of potable water in Walkerton, and operated the water treatment and distribution system at the time of the contamination, it is substantially and directly affected by this Inquiry and its recommendations. Mr. Prehogan stated that in his view there was no conflict of interest between the PUC and the Town with respect to determining what caused the contamination. He asserted, however, that the interest of the PUC is not identical to the interest of the Town, since the PUC has its own employees and its own statutory mandate. Mr. Prehogan said that, prior to May 2000, the Town was not involved in the events giving rise to this Inquiry except through the PUC. He also said the Town has been involved in remediation efforts since late May, 2000.

I am of the view that there is a significant congruence of interest between the Town and the PUC. However, Mr. McLeod raised the prospect that a conflict could arise. Recognizing this potential for conflict, I deem it prudent to grant separate standing to the Town and the PUC. Until such a conflict arises, I expect the Town and the PUC to cooperate. There will be only one set of cross-examinations to be shared by the two parties on all issues and evidence with respect to which there is no conflict.

I turn now to the fourteen individuals and the unnamed staff members and agents for whom Mr. McLeod also seeks standing. The Mayor, David Thomson, and former Mayor, James Bolden, were both *ex officio* members of the PUC during their time in office, and were also intimately involved in responding to water-related issues raised by the MOE. Both are, to a certain extent, in the "eye of the storm," and are substantially and directly involved in the events preceding and subsequent to May, 2000. As a result, I grant both Mr. Thomson and Mr. Bolden standing in Part I of the Inquiry, limited to matters relating to their personal or official involvement.

Mr. Burns, in his capacity as a consultant performing the role of Brockton's engineer, has a long history of direct involvement in engineering aspects of the Town's wells. I consider that he has a substantial and direct interest in matters relating to his performance of water-related engineering functions for the Town. In the result, I grant him standing, limited according to his interest so described.

My comments in respect of a single set of cross-examinations for the PUC and the Town also apply to the three individuals granted standing.

I decline to grant standing to the other individual co-applicants. If they are called as witnesses, their counsel may have standing in accordance with s.17 of the Rules. I do not find that they have a substantial and direct interest.

In terms of funding, Mr. McLeod requested that I defer my decision regarding funding for the Town and the individuals represented by him. I will make my decision

after Mr. McLeod has advised me of the outcome of the outstanding litigation between the Town and its insurers.

I propose to recommend funding for one counsel for the PUC.

L. The Association of Municipalities of Ontario

The Association of Municipalities of Ontario ("AMO") is a non-profit organization, made up of several hundred Ontario municipalities serving over 98 percent of Ontario's population. Mr. Hamilton, counsel for AMO, stated that the primary interest of his client is in Part II of the Inquiry, but he also submitted that the members of AMO would be substantially and directly affected by the findings of this Inquiry in Part IB as government policies will affect other municipalities. With respect to Part IA, he stated that AMO has much less interest but suggested that AMO might help in determining systemic issues deserving a further examination. The materials filed by AMO set out AMO's extensive involvement in drinking water issues from the municipal perspective, including AMO's interest in the provincial downloading of drinking water responsibility and funding pressures posed in the area of drinking water as a result of downloading. AMO proposes to work closely with the Municipal Engineers Association and the Ontario Good Roads Association.

Mr. Hamilton has also requested funding on behalf of AMO, stating that there are no funds presently available for the Walkerton Inquiry, and that AMO has already done a cash call among its members to raise funds for the Town.

I grant standing to AMO in Part II. I also grant standing in Part IB, limited to the interests of municipalities in issues raised in Part IB. I grant special standing to AMO for Part IA, as its interests are attenuated with respect to the Walkerton-specific issues given the standing of the Town. I suggest that any issues of concern in Part IA be raised with Commission counsel.

At this time I am not recommending funding for Part I of the Inquiry. AMO is a large and well-funded organization which has the ability to raise funds from its members. If indeed they are as committed to the issues as they have stated in their materials, I would expect the organization to devote the appropriate funds to represent its interests. I also note that reference is made to the fact that in this year's budget no priority had been set for the Inquiry. As Part IB will commence after Christmas, and thus after the year-end, there should be an opportunity to re-direct priorities. If funding is not possible for reasons not presently apparent to me, AMO may reapply. I defer my decision on funding with respect to Part II.

M. Stan Koebel

Stan Koebel was at all relevant times Manager of the PUC and his performance in this role gives him a substantial and direct interest, and therefore standing, for matters relating to his performance in this role in Part IA. Mr. Koebel also has standing in Part IB to the extent that the issues raised affect his substantial and direct personal interest. I recommend funding for one counsel for the limited interest described above.

N. Frank Koebel

Frank Koebel was at the relevant times the Foreman of the PUC and his performance in this role gives him a substantial and direct interest, and therefore standing, for matters relating to his performance in this role in Part IA. He also has standing in Part IB to the extent that the issues raised affect his substantial and direct personal interest. I recommend funding for one counsel for the limited interests described above.

O. Office of the Chief Coroner

The Chief Coroner of the Province of Ontario has applied for full standing in both Parts I and II. Ms. Cronk, on behalf of the Chief Coroner, indicated that given the broad mandate in the Order in Council creating the Inquiry, the Chief Coroner considers that an

inquest would involve an unnecessary duplication of effort and expense. Accordingly, the Chief Coroner does not, at present, intend to hold an inquest.

The Chief Coroner has made the results of his investigation available to Commission counsel.

I am pleased that the Chief Coroner wishes to be represented by counsel throughout the Inquiry. I appreciate the assistance the Chief Coroner has given the Inquiry to date and welcome the continued assistance of the Chief Coroner's counsel. The Chief Coroner has an interest in the work of the Inquiry and is able to contribute in a way I consider important. The Chief Coroner is therefore granted full standing in Parts I and II.

P. The Environmental Coalitions

The Commission received applications for standing from four environmental groups including three coalitions representing a broad range of interests in environmental matters. Each of the groups has asked for full standing and for funding in Parts I and II of the Inquiry. I will deal first with the three coalitions.

(i) ALERT – Sierra Club Coalition

This coalition is led by the Agricultural Livestock Expansion Response Team (ALERT) and the Sierra Club of Canada. The focus of the coalition is on the technical and regulatory issues surrounding intensive farming and manure management. Both ALERT and the Sierra Club have extensive experience with environmental concerns in the agricultural sector.

(ii) The Sierra Legal Defence Fund Coalition

The Sierra Legal Defence Fund submitted an application for standing and funding on behalf of three organizations: the Canadian Association of Physicians for the Environment, whose overarching concern is children's environmental health; the Council of Canadians, a citizens' watchdog association which is focused on such issues as the

safeguarding social programs, alternatives to free trade, and the commodification of fresh water; and Great Lakes United, a coalition of environmental, conservation, labour and community groups whose mission is to develop and maintain a healthy ecosystem in the Great Lakes. In both its written and oral submissions the Sierra Legal Coalition stressed the fact that it could offer the Inquiry broad national and international perspectives on the issues it would address.

(iii) The CEDF and Pollution Probe Coalition

This coalition is made up of two national organizations: the Canadian Environmental Defence Fund ("CEDF"), an organization whose mandate is to intervene directly or to provide technical, legal, organizational and financial support to other organizations in relation to legal initiatives on environmental issues; and Pollution Probe, an organization focusing on a broad range of environmental issues including the enhancement of water quality. Both the CEDF and Pollution Probe have long and distinguished histories of involvement in environmental matters. They are joined in the coalition by nine other local organizations: CARD of Balsam Lake, Coalition of Concerned Citizens of Caledon, Four Corners Environmental Group, Mariposa Aquifer Protection Association, Save the Rouge Valley System, Stuart Hall Against Mismanaged Environment, Waring's Creek Improvement Association, Fort Erie Water Advocacy Group and the Attawapiskat First Nation.

(iv) Discussion

On the issue of whether standing should be granted to any or all of these organizations, the three environmental coalitions in my view represent a clearly ascertainable interest and perspective which I consider important to my mandate in Part I. I do not believe that the interests of the environmental groups in Part I are accurately characterized as substantial and direct. In order to ensure that all important points of view are represented, however, I grant standing to an environmental group in Part IA to deal with environmental issues relating to farming and agriculture. I am also prepared to grant special standing with respect to the remaining issues in Part IA and full standing for Part IB. I note as well that the CWC will be represented by CELA, which brings a

similar perspective to the Inquiry as this coalition. That perspective will indeed be well represented throughout Part I.

While I consider the involvement of the environmental groups in Part I to be both useful and important, I believe that the interests represented by these groups can be adequately accommodated by one grant of standing to be shared among them. In reviewing the material filed by the coalitions, it appears to me that the positions advanced by them, where they do not overlap, are at least complementary. When asked by me, none of the counsel for the groups could identify any areas of conflict among the three coalitions. Because of the special expertise in the area of agricultural and farming, I assume that the ALERT – Sierra Club Coalition will deal with environmental issues relating to farming and agriculture. When I asked them in oral argument, both Ms. Christie on behalf of the Sierra Legal Defence Fund Coalition and Mr. Sokolov on behalf of the CEDF-Pollution Probe Coalition stated that they would be able to work out a division of the remaining environmental issues among themselves. I would also recommend funding for one counsel in Part I of the Inquiry to be allocated among the three coalitions in accordance with my reasons above.

Further, the three coalitions will in my view make an important contribution to Part II. As with the agricultural groups, I am prepared to grant separate standing in Part II to the extent that, in their written submissions, they express a different interest or perspective.

On the issue of funding, it is my intention, by granting standing in Part II to each of the three coalitions, that each be entitled to provide me with a detailed application for funding setting out the nature of any papers such group intends to prepare as well as the details of the costs it expects to incur with regard to Part II.

Q. <u>Energy Probe Research Foundation (EPRF)</u>

EPRF is an environmental and public policy research institute which traces its roots to Pollution Probe. I have not grouped EPRF with the other environmental groups

because its focus is markedly different from the three coalitions discussed above. Specifically, EPRF advocates a drinking water system that is regulated by government, operated and managed by the private sector and in which consumers pay the full cost of the system. EPRF has applied for full standing and funding in Parts I and II of the Inquiry.

Dealing first with Part I, EPRF has a clearly ascertainable perspective which I believe will be helpful to me in fulfilling my mandate in Part IB of the Inquiry. In my view, the unique perspective on which EPRF provides assistance is narrow. It centres on the issue of whether private ownership of the water system would have made a difference to what happened in Walkerton.

EPRF has also asked for standing in Part IA in order to ask questions of those officials in Walkerton with decision-making power over the water system. EPRF has informed me that these questions are necessary to assist in building its hypothesis about how a water utility should be structured. While I understand the reason for EPRF's request, I am of the view that its interest can be accommodated without granting it standing in Part IA. First, I understand that it is the intention of Commission counsel to call the evidence of local officials, not only in Part IA but also in Part IB. The evidence given by these officials in Part IB will focus on matters relating to government policies and procedures – the primary focus of EPRF. I therefore grant standing to EPRF in Part IB of the Inquiry for the limited perspective outlined above. I am not satisfied from the material presented that EPRF meets the funding criteria for Part IB. It is not clear to me what efforts, if any, it has made to raise funds for this Inquiry. EPRF may reapply in the future.

I am also prepared to grant standing to EPRF in Part II. As noted elsewhere in these reasons, I will defer consideration of the funding proposals for Part II.

R. Groups Applying for Part II Standing Only

I heard from a number of groups and individuals who applied for standing only in Part II of the Inquiry. For the reasons set out below, I have granted standing to each of these applicants. As I have noted previously, I have deferred the issue of funding for the preparation and/or presentation of Public Submissions until after the Commission Papers have been published in draft. Those groups which have an interest in preparing or assisting in the preparation of Commission Papers should contact Mr. Harry Swain, the Chair of our Research Advisory Panel. I have granted standing in Part II of the Inquiry to the following applicants.

1. Azurix North America (Canada) Corp.

Azurix provides water and waste water services to more than 700 facilities in Canada and the United States, including 16 facilities in Ontario. It has offered to bring to Part II its perspective as a private operator of water systems and I am of the view that this will assist me in the fulfillment of my mandate.

2. Indian Associations Coordinating Committee of Ontario Inc. (Chiefs of Ontario)

The Chiefs of Ontario is an umbrella organization for all status Indian communities in Ontario. It represents the interests of all of Ontario's 134 First Nations, comprising approximately 130,000 individuals, on a broad range of issues. I am most appreciative of the Chiefs of Ontario's offer to prepare a paper addressing First Nations water quality issues across the general topics proposed for the Inquiry. I also accept the Chiefs' offer to provide assistance on other drinking water-related issues affecting First Nations.

3. Conservation Ontario and Saugeen Valley Conservation Authority

Conservation Ontario represents Ontario's 38 conservation authorities and has applied for standing together with the Saugeen Valley Conservation Authority. The focus of these two organizations will be on the need for a comprehensive provincial framework for sustainable water management including submissions on current provincial policies and perceived program gaps. I note that Conservation Ontario and the Saugeen Valley Conservation Authority have offered to share standing with the Grand

River Conservation Authority and Ducks Unlimited. While I am appreciative of the fact that this offer was made in an attempt to help shorten the length of the Inquiry, I do not have the same concerns about an unduly protracted process in Part II as I do in Part I. For this reason I have granted separate standing to all three applicants. I note, however, that when requests for funding are made, I will again be looking to avoid any unnecessary duplication and would strongly urge these groups (and, indeed, any groups with the same or similar interest) to find ways to combine their efforts on any research papers which they may wish to produce.

4. Ducks Unlimited – Ontario

Ducks Unlimited has a long-standing interest in the preservation and management of Ontario's wetlands. Through its Waterfowl and Wetlands Research Institute, Ducks Unlimited is currently preparing a report outlining the science associated with wetlands, water quality and water management which they have kindly offered to provide to the Commisson when it is complete. I am most appreciate of this offer and look forward to further assistance from this organization.

5. The Grand River Conservation Authority

The Grand River Conservation Authority works with watershed municipalities, the Province and a variety of other groups to help protect the quality of the water supply in the Grand River watershed. For the reasons noted in relation to Conservation Ontario, I have also granted standing in Part II to the Grand River Conservation Authority.

6. The Ontario Municipal Water Association (OMWA)

OMWA represents more than 160 public drinking water authorities in Ontario. Its role is to lobby on behalf of its members on policy, legislative and regulatory issues related to the provision of water. OMWA offers to bring its knowledge and experience in the governance and operation of municipal public water systems to the Inquiry.

7. The Ontario Water Works Association (OWWA)

The OWWA's membership includes approximately 70 large and small utilities responsible for the provision of drinking water in Ontario. While the focus of the OMWA is on the management and operation of water systems, the focus of the OWWA is on the science and technology of water treatment. The interests of the OMWA and the OWWA obviously overlap. While I have granted each of these organizations standing, I encourage them to work together on the many issues which I expect they share.

8. The Ontario Society of Professional Engineers (OSPE)

The OSPE is a new organization recently spawned by the Professional Engineers – Ontario to deal with many non-regulatory concerns shared by professional engineers in Ontario. The OSPE has established a task group which will examine issues related to water quality management in Ontario from an engineering perspective. The OSPE has offered to provide input to the Commission on the following four issues: (i) the extent of engineering involvement in the production, treatment and delivery of drinking water; (ii) the gradual reduction in the extent of engineers' involvement in the drinking water process in Ontario; (iii) the value of having engineers involved in this process; and (iv) the fact that the quality of water systems is directly proportionate to the investment in such systems.

9. The Professional Engineers – Ontario

The Professional Engineers – Ontario is the organization which regulates and sets standards for engineers in Ontario. It has offered to bring its vast expertise in standard setting and the regulation of engineers to the Inquiry.

10. The Ontario Medical Association

The Ontario Medical Association intends to focus on the public health aspect of the Commission's mandate in Part II. Its particular interests are the roles of the Medical Officer of Health and the administrative structure and reporting requirements in the assurance of safe drinking water.

11. Maureen Reilly/ Sludgewatch

Ms. Reilly is involved in public interest research and public education on the agricultural application of wastewater sewage sludge, septage and other wastes. Ms. Reilly has offered her experience in these matters to Part II of the Inquiry and I am pleased to grant her standing.

S. Individuals

Five individuals with different experiences and backgrounds and with different points of view also sought standing. They are:

Ernest Farmer
Mary Richter
Mary-Clare Saunders
Jacqueline Schneider-Stewart (People Opposed to Ontario Pollution)
Greta Thomson

These individuals have not satisfied either of the criteria for standing. Each, however, has a point of view or experience that will be considered by Commission counsel in making decisions on what evidence should be called. I thank each of them for their interest in the Inquiry.

SUMMARY

I have granted standing to six parties for all issues in Part I. I have also granted standing to 14 other parties, some of them coalitions, but have limited their participation because of the nature of their interest or perspective. I have granted standing to, at most, 35 applicants in Part II, some of whom I expect will form coalitions.

I have dealt with standing so as to ensure that all the relevant interests and perspectives are fully represented. My first criterion has been to ensure the Inquiry is thorough. When in doubt, I have opted in favour of inclusion. In doing so, I recognize

there will be overlapping positions and a potential for duplication. I want to make two points clear about the process in Part I. I expect parties with the same interest to cooperate with one another and with Commission counsel to avoid repetition and delay. I also expect parties who have been granted standing in a limited area to stay within the permitted bounds. In light of these expectations, I will not hesitate to intervene where there is any departure from the approach I have set out above.

Finally, I want to thank the many individuals and groups who applied for standing. I appreciate your interest in the Inquiry and your willingness to help. I take great comfort from the enormous expertise that has been made available to the Inquiry through the grants of standing. I look forward to working with those granted standing on this endeavour that is so important to the people of Walkerton and the rest of Ontario.

APPENDIX - Appearances on behalf of applicants

- Paul Muldoon and Theresa McClenaghan, Canadian Environmental Law Association, for Concerned Citizens of Walkerton
- John Gilbert and Clayton Gutscher for the Walakerton Community Foundation
- Rick Lekx and Tom Schulz for the Walkerton & District Chamber of Commerce
- Frank Marrocco, Glenn Hainey and Lynn Mahoney for the Government of Ontario
- Paul Vrkley for the Ontario Farm Environmental Coalition
- Robert Bedggood for Christian Farmers Federation of Ontario
- Gordon Coukell for the Dairy Farmers of Ontario
- Jim Clark for the Ontario Cattle Feeders Association
- Mike McMorris for the Ontario Cattlemen's Association
- G. Michael Cooper for the Ontario Farm Animal Council
- Cecil Bradley for the Ontario Federation of Agriculture
- Larry Skinner for the Ontario Pork Producers Marketing Board
- Donald K. Eady and Timothy G.R. Hadwen for the Ontario Public Service Employees Union
- Peter T. Fallis for Mary Clare Saunders
- Greta Thompson, in person
- John H.E. Middlebro' for the Bruce Grey Owen Sound Health Unit
- Paul Wearing and James LeNoury for the Association of Local Public Health Agencies
- Earl A. Cherniak, Q.C. and Douglas Grace for Dr. Murray McQuigge, David Patterson and Mary Sellars
- David Jacobs for the Ontario New Democratic Party *et al.*

- James Caskey, Q.C. and Mark Poland for the Injured Victims
- Mr. Ernest Farmer, via telephone
- Michael Epstein for Frank Koebel
- William Trudell for Stan Koebel
- Rod McLeod, Q.C. and Bruce McMeekin for the Municipality of Brockton *et al.*
- Kenneth Prehogan for the Walkerton Public Utilities Commission
- Frank J.E. Zechner for Azurix North America (Canada) Ltd.
- Paul G. Vogel and Dawn J. Kershaw for the ALERT – Sierra Club Coalition
- E.A. Cronk for the Office of the Chief Coroner of Ontario
- Mark Mattson for Energy Probe Research Foundation
- Louis Sokolov and Benson Cowan for the Canadian Environmental Defence Fund *et al.*
- Elizabeth Christie for the Canadian Association of Physicians for the Environment *et al.*
- Jacqueline Schneider-Stewart representing People Opposed to Ontario Pollution
- Howard Goldblatt for the Canadian Union of Public Employees, Local 255, individual named members, and CUPE National
- Ian Fellows for the Professional Engineers and Architects of the Ontario Public Service
- Jonathan W. Kahn and Allison A. Thornton for the Chiefs of Ontario
- Richard Hunter for Conservation Ontario
- Jim Coffey for the Saugeen Valley Conservation Authority
- J. Anderson for Ducks Unlimited - Ontario
- Douglas B. James and Barker Willson for the Ontario Municipal Water Association
- Paul Emerson for the Grand River Conservation Authority

- Joseph Castrilli for the Ontario Water Works Association
- Robert Goodings and Joyce Rowlands for the Ontario Society of Professional Engineers
- Doug Hamilton and Craig Rix for the Association of Municipalities of Ontario
- John D. Gamble and Johnny Zuccon for the Professional Engineers of Ontario
- B.T.B. (Ted) Boadway, M.D. for the Ontario Medical Association
- Maureen Reilly for Sludgewatch (Uxbridge Conservation Authority)
- Mrs. Mary Richter, in person